



August 9, 2024

Target Benefit Framework  
Pension Benefits Standards Unit, Pension Policy Branch  
Ministry of Finance  
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Toronto, ON  
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*Via electronic submission to the Regulatory Registry*

To Whom It May Concern:

**RE: Public consultation on draft regulations to support A Permanent Framework for Target Benefits (TBP Regulations) (Proposal Number 24-MOF012)**

ACPM is the leading advocacy organization for a balanced, effective, and sustainable retirement income system in Canada. Our private and public sector retirement plan sponsors and administrators manage retirement plans for millions of plan members, including both active plan members and retirees.

Following our [submission dated October 26, 2023](#) on the [Permanent Framework for Target Benefits Revised Proposal](#), ACPM is pleased to provide this response to the request for technical comments on the [proposed regulations to support the implementation of a Permanent Framework for Target Benefits](#) (the “Proposal”), released by the Ministry of Finance (“MOF”) on June 26, 2024.

ACPM recognizes that the Proposal is a significant step towards the establishment of the regulatory framework for Target Benefit Plans (TBPs) by 2025, which will enable the conversion of Specified Ontario Multi-Employer Pension Plans (SOMEPPs) to TBPs in the coming years. SOMEPPs are an important part of the retirement system in Ontario with over one million plan members and other participants<sup>1</sup>.

In general, the Proposal includes requirements that are much more prescriptive than other jurisdictions which results in additional cost for TBPs that could potentially result in reduced benefits for their members. ACPM believes that the use of overly prescriptive regulations is not warranted and may have negative consequences for TBPs.

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<sup>1</sup> [2022 Report on the Funding of Defined Benefit Pension Plans in Ontario](#), Financial Services Regulatory Authority (FSRA), July 2023, Table 3.3

The Proposal may also have relevance for other types of plans in Ontario, as it includes proposed regulatory standards for TBP governance, communication and funding policies which may form the basis for similar requirements for defined benefit and defined contribution plans in the future.

It is in the context of the above two points that we offer the following comments.

### **Policies on Funding and Benefits, Governance and Communication**

Ontario's minimum standards for documents that create and support a pension plan are being expanded to include written policies as referenced in section 10 of the PBA. For TBPs, this includes a funding and benefits policy, a governance policy, and a communications policy, as addressed in the Proposal.

The proposed regulation [Written Policies under Section 10 of the Act](#) represents the addition of new governance documentation standards that are highly prescriptive.

It is our continued position that the detailed codification of certain elements is problematic, particularly in relation to governance and communication policies. ACPM encourages an approach through which plan governance is supported by principles-based regulatory guidance and where the oversight performed by trustees and the regulator aligns with, and may evolve with, a plan's characteristics and risks. As fiduciaries, plan administrators are subject to high standards of care under the *Pension Benefits Act* (PBA) and at law, and SOMEPPS and MEPPs are managed by their trustees consistent with their fiduciary obligations, industry guidance and best practices<sup>2</sup>.

Before these regulations are enacted, we encourage MOF to demonstrate that the addition of these substantive new filing and documentation requirements will lead to better outcomes, rather than simply adding red tape to existing governance practices and imposing additional costs that reduce the funds available for benefits. We note that other jurisdictions that require governance and funding policies are much less prescriptive in what is required in these policies, and most do not require them to be filed with the regulator. No jurisdiction requires a communication policy to be prepared or filed. We encourage MOF to revise these sections of the Proposal to be less prescriptive and more like the corresponding requirements of other jurisdictions.

ACPM is particularly interested in research performed by FSRA on defined benefit MEPP benchmarking, and whether it provides evidence that such regulation is needed. For context, in 2020, FSRA conducted a thematic review of this sector, resulting in the publication of

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<sup>2</sup> For example, FSRA's [Pension Plan Administrators Roles and Responsibilities](#) No. PE0296INT, and [CAPSA Guidelines on Governance, Prudence and Funding](#).

guidance on governance leading practices<sup>3</sup>. FSRA also undertook benchmarking research and consultation to “result in more unified governance, risk management, operational and communication practices across MEPPs, enhanced risk profiles, and improved focus on regulatory efficiency and effectiveness”. The benchmarking report was not published at the time of this consultation<sup>4</sup>.

#### Technical Comments re Funding Policy (section 4)

- Item 1 iii. requires the “equitable” treatment of members. This term is not used elsewhere in the proposed TBP regulations. Fiduciaries are required to be “even-handed”; therefore, we request that this reference be clarified or the adjective “equitable” be removed altogether.

#### Technical Comments re Governance Policy (section 5)

- The description for each requirement should use language that reflects the risk or issue that the regulation is intended to address without being overly narrow or at risk of misinterpretation. For example, in items 1 and 2, a policy can appropriately describe the structure by which oversight of plan administration will occur without needing to expressly inventory or itemize reporting relationships, operational policies or organizational structure.
- Items 3 to 5 focus on demonstrating that those involved in administration of the plan or fund have (or have access to) the skills, knowledge, experience, and other attributes suitable to their role, which may include access to education and expert advisors, as applicable. Item 3 should avoid constraining a plan’s governance structure or appointment of trustees, where such approaches are in accordance with its governing documents and are otherwise compliant with the PBA. ACPM also recommends caution that this Proposal should not inappropriately expand or disrupt the PBA fiduciary standard of care.
- Item 6 is already covered in the Funding Policy and should not have to be repeated in the Governance Policy.

#### Technical Comments re Communications Policy (section 6)

- These items presume that a communications policy will mandate certain processes and actions (“must be used”, “must be taken”), rather than enabling the communication policy to flow from the plan’s governance structure and to guide and empower the administrator.
- Item 3 speaks to the different communication needs of active, deferred, and retired members “based on their demographics”. While recognizing the potentially disparate

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<sup>3</sup> FSRA [Defined Benefit Multi-Employer Pension Plans – Leading Practices](#), Information PE0224INF

<sup>4</sup> FSRA’s [Pension update, June 6, 2024](#) indicates that publication of DB MEPP Benchmarking Summary Report is “on the horizon”. [FSRA’s Annual Business Plan 2024-27](#) outlines activities to support the new TBP Framework, including drafting prudential supervisory Guidance and publishing a benchmarking report of DB MEPP plans against FSRA’s published leading practices.

needs and perspectives of such audiences, we note that the TBP regulatory framework itself inherently addresses this, and that an administrator has a fiduciary duty to all members. ACPM cautions against interpretations that may inappropriately broaden the consideration of member needs and demographics in communication policies mandated by the Proposal<sup>5</sup>.

- Item 4 references any information, other than prescribed information, that an administrator determines “must be included in statements to members ... to help them understand that benefits may be reduced”. We question the appropriateness of mandating that a communication policy itemize any such information beyond regulated disclosures. ACPM is also concerned this may encourage a box-ticking approach to assessing the fulfilment or effectiveness of the communications policy.

#### Implementation Considerations for Required Policies

The Proposal specifies that:

- the initial filing of certified copies of these policies must occur within one year after the effective date for an existing plan conversion to a TBP, and
- at a minimum, each policy must be reviewed every three years, and any updates filed within 60 days.

If these filings are to be required, ACPM requests that the filing process be hassle-free and implemented with consideration to the impact on plan governance schedules and planning. TBP administrators and Boards of Trustees will need to adapt their processes and ensure sufficient time to review and approve these policies on a reasonable cycle.

Please consider whether section 8(4) is needed, given the CEO’s existing authority under the PBA and Regulation 909.

#### **Provision of Information to Members**

##### Proposal for Stand-alone Regulation

The MOF has requested feedback on the approach of potentially moving the provision of information requirements from Regulation 909 to a new stand-alone regulation that would address these information requirements for all plan types. The Proposal states that these requirements for non-TBP plans would not change.

ACPM has no immediate objection to this approach. If the sole impact were to change the regulatory citation, we would not foresee any impact to plan administration or costs, as such citations are not typically included in plan documentation or member communications. Improvements to the organization and presentation of such disclosure requirements may enable greater ease of reference by administrators and other audiences, who are interested primarily in the rules applicable to their specific type(s) of plan. However, there is also a risk

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<sup>5</sup> See [ACPM’s response to FSRA’s Consultation on Proposed Approach to Strengthening Protection of Vulnerable Consumers](#), March 8, 2024

of fragmentation where such disclosure requirements relate to certain situations, such as asset transfers or family law matters.

ACPM would welcome an opportunity to further discuss how the provision of information regulations could be modernized to support more effective plan administration and member engagement. For example, the addition in 2020 of the “waiver of notice requirements” provisions in sections 80(16) and 81(16) of the PBA was a positive development that has supported rational and meaningful disclosure to members in the context of asset transfers. ACPM encourages MOF to build this kind of flexibility into other PBA disclosure requirements, including the Proposals for TBPs.

#### Specific Disclosure Requirements for TBPs

- The application of each element should be clear. For example, in the information to be prescribed for the purpose of clause 25(1)(c), item 7 refers to “An explanation that, if required by the terms of the plan...” which pertains to a potential commuted value reduction (page 2 of the Provision of Information Overview). If the plan does not have such a provision, is any disclosure required for this item?
- Item 8 would require that new members be advised that they could have a lower income in retirement if they choose to transfer the commuted value of their benefit out of the plan. Please consider whether such disclosure is meaningful for this population of new/active TBP members, whose focus may be on understanding how the plan works and how benefit adjustments can be made. If/when they are at a life event where they are entitled to elect a commute value, the termination disclosures required by the PBA and the actuarial standards of practice will address this issue.
- The concept of “risk pooling” is referenced in item 8 of the Provision of Information Overview and item (e) of the Statements on Termination of Membership. An administrator may prefer to use other phrasing to address this item, and we recommend that the regulation be clear that the requirement can be met without using the specific phrase of “risk pooling”.
- We request that SOMEPPS be excluded from having to provide the notice of conversion to target benefits to members. Nothing is changing for these members and the notice will cause the members confusion and concern and adds administrative costs. Alternatively, please consider whether such information could be provided in the next annual statement or member newsletter, rather than as a stand-alone notice.
- The list of information required on a statement on death of a member, former member or retired member includes “the estimated going concern funded ratio calculated as of the end of the period covered by the statement” (section 2.ii). This reference appears to have been included in error. We are assuming the intention is not to require that the going concern funded ratio to be calculated at the date of death of every member. It would be preferable to align this with the going concern funded ratio disclosure in the termination statement.

## Funding and Design

- Rules for benefit reductions and improvements are too prescriptive and administratively burdensome. Fiduciary responsibility requires that the Board of Trustees of TBPs act in an even-handed way and in the best interest of the plan and its members. Each plan is unique and the prescriptive rules in the Proposal will not necessarily be in the best interest of the members and beneficiaries of every plan. As an example, if a Board proposes to reduce only future benefits for active members, under the Proposal, it appears that they would not be permitted to reduce accrued benefits for deferred vested members. This may not be considered even handed or in the best interest of the plan and its members. Further, the rules will require tracking by member of “member reduction” and “former member reduction” which will lead to significant additional administrative cost that is not necessarily in the best interest of members. Again, ACPM notes that no other jurisdiction is this prescriptive on benefit reductions or improvements for target benefit plans and we request that the MOF be consistent with other jurisdictions.
- The stress testing required to be included in valuation reports for TBPs is very extensive and not needed for any other types of plans. The Canadian Institute of Actuaries (CIA) already has standards in place to identify and report on risks – Plausible Adverse Scenarios. That should be sufficient for disclosure in valuation reports and additional requirements in the Regulations are not needed. Again, no other jurisdiction requires this type of additional stress testing to be included in valuation reports for TBPs and requiring this additional reporting will increase costs for TBPs. Furthermore, most TBPs will perform this type of stress testing when setting their funding and benefits policy and it does not need to be repeated with every valuation.
- The Proposal requires that a TBP file an annual valuation if, in the most recently filed valuation report, surplus is used to meet the contribution sufficiency test. This is inconsistent with the requirement for single employer plans that are only required to file actuarial cost certificates each year to demonstrate that surplus still exists that can be used for a contribution holiday. We request MOF to be consistent and apply the same requirements to TBPs.
- ACPM agrees that the setting of the Provision for Adverse Deviation (PfAD) formula should not be prescribed but up to Boards of Trustees and informed by FSRA guidance (consistent with the second consultation). The Proposal is vague on determination of the PfAD in first conversion valuation report, other than stating it does not need to comply with the plan’s funding and benefits policy. Our understanding from the second consultation is that no PfAD will be required in the first valuation filed as of the effective date of conversion. Please confirm.
- ACPM supports the ability of TBPs to calculate commuted values in accordance with the CIA Standards of Practice for plans that can reduce benefits and understand that s. 17 of the Proposal for commuted value calculations provides for this. We note, however, that Section 6(2) states that the “amount or the commuted value of accrued

benefits cannot be reduced solely because of the termination of employment or membership of a member, or the death of a former member or a retired member”. We assume this is not intended to restrict the ability of a TBP to adjust a commuted value by the plan’s going concern funded status as permitted by the CIA Standards of Practice.

### **Future Review of the TBP Regulatory Framework**

ACPM encourages MOF and FSRA to periodically assess and report on the TBP framework, with a view to the objectives of regulatory efficiency and effectiveness, burden reduction and enabling innovation.

There is no statutory requirement for a periodic review of the Proposals, once enacted. Although MOF has stated its intention to review the framework against its objectives in the future, the decades-long journey to the current Proposal is a reminder of the challenges and delays that can occur. This consideration has also informed our feedback above on the Written Policies and Provision of Information regulations, which may need to evolve over time.

### **Conclusion**

Thank you for the opportunity to comment on the Proposal. If you have any questions or would like to discuss this matter, please do not hesitate to contact us.

Yours sincerely,



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